## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

### Opinion Below.

The United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion in this case on May 4, 1944. The opinion is set forth on pages 121 to 125 of the record.

### Jurisdiction.

The judgment to be reviewed was entered by the Circuit Court of Appeals for the Seventh Circuit on May 4, 1944. A writ of certiorari is asked under Section 240 of the Judicial Code (Act of March 3, 1911 c. 231, § 240, 36 Stat. 1157 as amended February 13, 1925, c. 229, § 1, 43 Stat. 938).

### Statement of the Case and Questions Presented.

For a statement of the case and of the questions presented see pages 1 through 12 above.

### Specification of Errors.

The Seventh Circuit Court of Appeals erred:

1. In affirming the summary judgment of the District Court in cause No. 43C 24.

2. In not reversing the summary judgment of the District Court in cause No. 43C 24.

3. In finding that the record is clear that petitioner

received a fair judicial hearing, brought about at his own behest, on the complaint presented to the General Assembly.

4. In not finding that the record is clear that petitioner neither requested nor received a hearing *de novo* or determination on the merits of the issue of dissolution of his pastorate before the General Assembly.

5. In not finding that under the Constitution and Laws of the Presbyterian Church the General Assembly has no original jurisdiction to hear and determine the issue of dissolution of petitioner's pastorate.

6. In making findings of fact and conclusions of law directly contrary to the sworn statements of material fact contained in petitioner's affidavits filed in opposition to respondent's motion for summary judgment.

7. In failing to grant petitioner the right to a trial by jury of the issues of material fact raised by the affidavits filed in opposition to the motion for summary judgment.

8. In failing to reverse the summary judgment and remand the proceedings to the District Court with directions to grant a jury trial of the material facts upon the merits in the District Court.

## ARGUMENT.

### I.

**The Presbyterian Church and all its judicatories are strictly subject to its Constitution and Book of Discipline.**

That the Presbyterian Church in the United States of America is *strictly governed* by a written Constitution and Laws with which *all church action must comply* is beyond any possible dispute. It is a matter of common knowledge that it was one of the chief purposes of the Protestant Reformation in the Sixteenth Century to substitute a body of written law as the supreme and governing authority in the Christian church to replace the supreme authority which had previously been vested exclusively in the Bishop of Rome. For more than three centuries the Presbyterian Church has been *strictly and exclusively governed by its written Constitution or Form of Government and by its Book of Discipline.* Even the General Assembly itself cannot violate the Constitution and Laws of the Presbyterian Church; for in the Presbyterian Church the Constitution and Laws are supreme. The judicatories, including the General Assembly, are subordinate to the Constitution, not the Constitution to the judicatories (Presbyterian Digest, p. 323-6).

Petitioner cites three cases (out of scores) which trace the history of the Presbyterian Church for centuries past and establish the *absolute supremacy* of the Constitution

and the Book of Discipline over the judicatories, including the General Assembly itself:

*Landrith* v. *Hudgins*, 120 S. W. 783;
*Gartin* v. *Penick*, 5 Bush. (Ky.) 110;
*Boyles* v. *Roberts*, 121 S. W. 805.

## II.

**The Civil Courts will protect petitioner's right to his salary and pension if he had been deprived thereof by unconstitutional ecclesiastical procedure.**

That a pastor's right to his salary and pension is a civil contractual right (and not a mere ecclesiastical right) is beyond dispute. While it has long been recognized that no secular court will interfere in any purely religious dispute involving only doctrinal or ecclesiastical matters, it has nevertheless been equally well established that the civil courts will take full cognizance of all civil rights and claims, whether the same involve contracts or property, even though the defendant may be a church or other religious organization. In considering whether a minister has been deprived of his civil contractual right to salary and pension, the civil court will examine the ecclesiastical law of the church in order to determine whether under its Constitution and Laws the ecclesiastical proceedings depriving any minister of his rights have been in full compliance therewith.

*Wallace* v. *Trustees of General Assembly of the United Presbyterian Church of North America*, 45 Atl. 84; 50 Atl. 762;
*Kelly* v. *McIntire*, 197 Atl. 736;
*McDowell* v. *Wilson*, 97 Atl. 100;
*Woods* v. *Humber*, 282 S. W. 834;
*Marsh* v. *Johnson*, 82 S. W. (2) 345;

*Quinn* v. *First Evangelist Baptist Church*, 135 Sou. 753;
*Yanthis* v. *Kemp*, 85 N. E. 976;
*Grupe* v. *Rudissell*, 184 Atl. 874;
*Kedrovsky* v. *Burdikoff*, 146 Atl. 613;
*Taylor* v. *Jackson*, 273 F. 345;
*Schweiker* v. *Husser*, 146 Ill. 399;
*Bouldin* v. *Alexander*, 15 Wall. 131;
*Papailiou* v. *Manusos*, 108 Ill. App. 272; 113 Ill. App. 316;
*Evangelical Lutheran St. Paul's Congregation* v. *Hass*, 187 N. W. 677;
*Vaughan* v. *Maynard*, 170 S. W. (2d) 897;
*Mason* v. *Lee*, 50 So. 625;
*Trustees of Delaware, etc. Church* v. *Ennis*, 29 Atl. (2d) 374.

Many of the above cases involved the removal of a minister; and the civil courts uniformly held that they were required to investigate the ecclesiastical law in order to decide whether the minister had been deprived of his rights within that law. Where, as in the *Wallace* case, the Supreme Court of Pennsylvania found that the General Assembly in removing the pastor had not acted in compliance with church law, the Supreme Court did not hesitate to find and hold that the minister was therefore "still entitled to hold the pastorate of the Jamestown Church" *and to retain all of his civil rights under his contract.* In disposing of the defense of *laches*, the Supreme Court held on the second appeal (50 Atl. 762) (p. 764): "Whatever force this might have on the amount of damages he (the minister) might claim from the Jamestown congregation, *it does not stop him from having his dismissal from the latter congregation declared unlawful by the civil courts.*"

In the case of *Taylor* v. *Jackson*, 273 F. 345, the Court of Appeals of the District of Columbia on appeal from the Supreme Court of the District considered the right of the plaintiffs to be restored to membership in the Florida Avenue Baptist Church. The Court said (p. 347): "No temporal rights of appellees being involved, our inquiry must be confined to an examination of the rules of the church organization, *for the purpose of determining whether there has been a substantial compliance with those rules.*" The Court held that a church member who had not received a notice required by the church law had thereby been deprived of his "*opportunity to be heard*" and that "*the order expelling him therefore was void*" (citing numerous decisions including *Bouldin* v. *Alexander*, 15 Wall. 131).

Similarly the Supreme Court of Illinois in *Schweiker* v. *Husser*, 146 Ill. 399, held that the office of pastor is "a property right . . . which a court of equity will recognize and protect," and *examined with great care the church law* to decide which of two contestants was entitled to the office. In doing so the Supreme Court was required to determine which was "the true and lawful General Conference of the Evangelical Association," which was analogous to the "General Assembly of the Presbyterian Church" in this case.

In examining into church law the civil courts give particular attention to whether *a full and proper hearing upon the merits of the controversy*, after due and proper notice, has been accorded in the ecclesiastical courts. For cases in which the action of the church tribunals has been reversed on the ground that *a full hearing upon proper notice was not granted*, we direct this Court's attention to:

*Hatfield* v. *DeLong*, 59 N. E. 483;

*First Church of Christ Scientist* v. *Rentzel*, 218 N. W. 652;
*Powanda* v. *Pido*, 155 Atl. 90;
*Rock Dell, etc. Congregation* v. *Mommsen*, 219 N. W. 88;
*Woodrum* v. *Burton*, 107 S. E. 102.

The foregoing cases not only show beyond any doubt that the secular courts will take jurisdiction of any controversy involving a civil contractual right, such as that of a minister to his salary and pension money, but will for that purpose examine ecclesiastical law to determine whether the action of the ecclesiastical judicatory was *regular and in conformity with the Constitution and Laws of the religious organization involved.*

These cases also show that *the strictest compliance with the ecclesiastical procedures is required*, especially where the issue is whether a full and proper hearing pursuant to notice has been had upon the merits of the controversy. The civil courts have not hesitated to overrule the action of the highest church judicatories, such as the General Assembly of the Presbyterian Church, if the church law has not been precisely and correctly followed and applied.

The General Assembly itself upheld petitioner's right in this case to sue for his salary and pension *in the civil courts.* It said that if petitioner "honestly felt that he had a claim for salary, . . . *he could resort to* either the ecclesiastical courts *or the civil courts to enforce his rights.* Before either the Commission or Presbytery had attempted to act on the dissolution of his pastoral relation he had resorted to the Civil Courts where his suit is still pending. . . . He does not ask this General Assembly to adjudicate his salary claim, and *the determination thereof, by his voluntary act, rests with the Civil Courts*" (R. 97).

## III.

**Petitioner's pastorate was not properly dissolved under the Constitution and Laws of the Presbyterian Church.**

As indicated in the Statement of the Case above, the General Assembly found that Presbytery and Synod in this case had committed "inexcusable error" and "incredible errors" which were "not mere technicalities," but which denied petitioner the rights "accorded him by our Constitution" by denying both petitioner and respondent "a hearing as required under the plain provisions of Chapter XII, Section 12, of the Book of Discipline" and as provided in Chapter XVII, Section 1 of the Constitution (R. 95-9).

The General Assembly, however, purported to hear and dispose of the issue by dissolving the pastorate on its own account. As indicated in the statement above, there were insuperable obstacles to this action by the General Assembly:

1. The General Assembly had no power of original jurisdiction to dissolve the pastorate because the Constitution and Laws of the Presbyterian Church specifically vests such power exclusively in the local Presbytery (R. 95, 97; Constitution, Chap. XVII, Sec. 1; Book of Discipline, Chap. XII, Sec. 12, p. 417-8).

2. The General Assembly itself held that in order to dissolve the pastorate it was necessary for both petitioner and respondent to request the General Assembly "to dispose of the action upon the merits" (R. 96). The General Assembly found that *both petitioner and respondent had made this request* (R. 96, 99). So did the Circuit Court

of Appeals (R. 124). But it clearly appeared from petitioner's affidavit (R. 63), and the trial court itself correctly found (R. 80), that "neither plaintiff (petitioner) nor defendant (respondent) *ever requested* the Permanent Judicial Commission of the General Assembly to consider, decide or dispose of his (petitioner's) complaint upon the merits." The trial court also correctly found that petitioner "further asserts in his affidavit that neither he nor the Presbytery of Chicago nor the Synod of Illinois *ever submitted the matters contained in his complaint here* to said Permanent Judicial Commission or the General Assembly for decision, or requested said Permanent Judicial Commission or General Assembly to consider, dispose of or decide affiant's (petitioner's) complaint or the matters therein referred to upon their merits" (R. 81).

Thus upon two incontrovertible grounds the General Assembly of the Presbyterian Church violated its Constitution and Laws in (1) purporting to exercise original jurisdiction, which it did not have, to dissolve the pastorate, and (2) purporting to find that petitioner and respondent *had requested* the General Assembly or its Permanent Judicial Commission to act upon the issue of dissolution, in place of the local Presbytery in which the sole power to dissolve the pastorate was vested by the Constitution and Laws of the Church.

## IV.

**The summary judgment in this case violated Rule 56 of the Federal Rules of Civil Procedure and the Fifth and Seventh Amendments.**

Rule 56 of the Federal Rules of Civil Procedure provides that no summary judgment may be entered unless "there is no genuine issue as to *any material fact* and that the moving party is entitled to a judgment *as a matter of law.*" (Emphasis supplied.)

It is obvious that the summary judgment entered in this case rests primarily upon the finding of fact by the General Assembly that a full hearing was granted to petitioner before its Permanent Judicial Commission and that petitioner requested that the General Assembly take jurisdiction *de novo* and dispose of the issue of dissolution upon its merits. The summary judgment cannot be valid if either (1) the General Assembly had no original jurisdiction to hear the issue of dissolution on its merits, or (2) if petitioner did not request such a hearing.

Petitioner's sworn affidavits in the trial court deny that the General Assembly had any original jurisdiction to hear the issue of dissolution upon its merits under Chapter XVII, Section 1 of the Constitution, and Chapter XII, Section 12, of the Book of Discipline of the Presbyterian Church (R. 95, 97). Plaintiff's sworn affidavits show that petitioner never did request the General Assembly to consider the issue of dissolution on its merits (R. 63).

This Court in the recent case of *Sartor* v. *Arkansas Natural Gas Corp.*, 321 U. S. 620 (decided March 27, 1944, opinion by Mr. Justice Jackson) clearly stated that "Rule 56 authorizes summary judgment only where the moving

party is entitled to judgment as a matter of law, where it is quite clear what the truth is, that no genuine issue remains for trial, and that the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try. *American Insurance Co.* v. *Gentile Bros. Co.*, 109 Fed. (2) 732; *Whitaker* v. *Coleman*, 115 Fed. (2) 305."

All of the Circuit Courts of Appeals have with perfect unanimity (except for the single decision in the case at bar) ruled that "any substantial dispute as to a material fact forecloses summary judgment."

*Associates Discount Corp* v. *Crow*, 110 Fed. (2) 126;

*Houghton Mifflin Co.* v. *Stackpole Sons, Inc.*, 113 Fed. (2) 627 (Second Circuit);

*Wyant* v. *Crittenden*, 113 Fed. (2) 170;

*Whitaker* v. *Coleman*, 115 Fed. (2) 305 (Fifth Circuit);

*McElwaine* v. *Wickwire Spencer Steel Co.*, 126 Fed. (2) 210 (Second Circuit);

*Miller* v. *Miller*, 122 Fed. (2) 209;

*Toebelman* v. *Mo-Kansas Pipe Line Co.*, 130 Fed. (2) 1016 (Third Circuit);

*Ramsouer* v. *Midland Valley R. Co.*, 135 Fed. (2) 101 (Eighth Circuit);

*Campana Corp.* v. *Harrison*, 135 Fed. (2) 334 (Seventh Circuit);

*Dewey & Almy Chemical Co.* v. *American Anode Inc.*, 137 Fed. (2) 68 (Third Circuit).

It will be noted that, in Mr. Justice Jackson's opinion above quoted, he makes particular reference to *the right of parties to a jury trial*, saying "the purpose of the Rule is not to cut litigants off from *their right of trial by jury.*"

The Circuit Courts for the Fifth and Eighth Circuits, in the *Whitaker* and *Ramsouer* cases above cited, likewise held that the litigants' right to a jury trial should not be infringed by a summary judgment under Rule 56.

Until the decision of the Circuit Court of Appeals for the Seventh Circuit in the case at bar, none of the Circuit Courts of Appeals have allowed a summary judgment to stand which was based upon a finding of material (essential) fact which was squarely controverted by the opposing parties' affidavits, as in the case at bar.

The trial judge specifically found that petitioner's affidavits showed that petitioner never requested the General Assembly or its Permanent Judicial Commission to pass upon the issue of dissolution upon the merits (R. 80-1).

It follows that the following statement in the opinion of the Circuit Court in this case is absolutely in square conflict with, and in defiance of, plaintiff's affidavits:

> "Whatever the procedure, the record is clear that eventually plaintiff (petitioner) received a fair, judicial hearing, brought about at his own behest, on the complaint presented to the General Assembly. It is too late for him to complain now that the mechanics of procedure were not perfect."

The last sentence above quoted is somewhat astonishing *in view of the vigorous condemnation of these very "mechanics of procedure"* by the General Assembly itself (R. 95-9). It was just because these "mechanics of procedure" were so unfair to petitioner, that the General Assembly purported to decide the case *de novo* at a hearing before its own Permanent Judicial Commission.

The key error in Judge Lindley's opinion, therefore, is the statement that because petitioner "brought about at his own behest" a hearing before the General Assembly, "it is too late for him to complain now" (R. 124). This statement, as we have shown, is erroneous, and is directly and squarely controverted by both petitioner's affidavits and by the findings of the trial court.

In view of the very close association between Judge Lindley and Judge Wham, both of whom sit in the same District Court of the United States for the Eastern Division of Illinois, *petitioner submits that Judge Lindley should have disqualified himself from sitting in this case.* Judge Wham was actually a member of the Permanent Judicial Commission of the Synod of Illinois at the time that the Synod acted and was severely criticized for its improper "procedure" *in this very case.* Petitioner does not mean to imply any improper motive whatever on Judge Lindley's part. But consciously or unconsciously, Judge Lindley was dealing in his opinion adversely to petitioner with a matter with which Judge Wham had an official connection; and petitioner, with complete respect for Judge Lindley's integrity, submits that in that particular situation Judge Lindley should have disqualified himself to sit on the Circuit Court, to which he is not regularly assigned, in this case.

A petition for a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit in this case is therefore respectfully prayed, to the end that petitioner shall be permitted a jury trial upon the merits of his case and shall not be denied his right thereto by a summary judgment which cannot stand if the facts as stated in petitioner's affidavits *and in the trial Court's findings* are true.

Respectfully submitted,

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